

In the Matter of THE QUAKER OATS COMPANY *and* UNITED CEREAL
WORKERS LOCAL INDUSTRIAL UNION, No. 1105

Case No. R-2527.—Decided June 5, 1941

Jurisdiction: cereal-manufacturing industry.

Investigation and Certification of Representatives: existence of question: refusal to accord union recognition until it is certified by the Board; elections necessary.

Units Appropriate for Collective Bargaining: single or separate units comprising: (1) production and maintenance employees including watchmen, firemen, and heating engineers, but excluding planning and drafting engineers and laboratory employees, office employees, and supervisors; and (2) sheet-metal workers and apprentices; and (3) millwrights and apprentices; determination of, dependent upon elections.

Messrs. Grimm, Elliott, Shuttleworth & Ingersoll, by *Mr. Owen Elliott* and *Mr. V. C. Shuttleworth*, of Cedar Rapids, Iowa, for the Company.

Mr. Ben Henry, of Cedar Rapids, Iowa, and *Mr. Jack Woodrow*, of Ottumwa, Iowa, for the United.

Mr. Frank C. Byers, of Cedar Rapids, Iowa, for the Millwrights and Sheet Metal Workers.

Miss Marcia Hertzmark, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

On April 1, 1941, United Cereal Workers Local Industrial Union, No. 1105, herein called the United, filed with the Regional Director for the Eighteenth Region (Minneapolis, Minnesota) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The Quaker Oats Company, Cedar Rapids, Iowa, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On April 12, 1941, the United filed an amended petition with the Regional Director. On the same date a motion

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to intervene was filed by Sheet Metal Workers' International Association, Local Union No. 263, herein called the Sheet Metal Workers, a labor organization claiming to represent employees directly affected by the investigation. The Regional Director granted the motion to intervene on April 14, 1941. On April 15, 1941, a motion to intervene was filed by Millwright Local 1039 of United Brotherhood of Carpenters and Joiners of America, herein called the Millwrights, a labor organization claiming to represent employees directly affected by the investigation. The motion was granted by the Regional Director on April 18, 1941. On April 21, 1941, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act, and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On April 23, 1941, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, the United, the Sheet Metal Workers, the Millwrights, and upon Federal Labor Union 22,325, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to notice, a hearing was held on May 1 and 2, 1941, at Cedar Rapids, Iowa, before Henry W. Lehmann, the Trial Examiner duly designated by the Chief Trial Examiner. The Company, the Sheet Metal Workers and the Millwrights were represented by counsel and the United by its representatives; all participated in the hearing.¹ Federal Labor Union 22,325 did not appear. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. Briefs were thereafter filed with the Board by the United and by the Millwrights and Sheet Metal Workers.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Quaker Oats Company, a corporation organized under the laws of the State of New Jersey and having its principal place of business in Chicago, Illinois, is engaged in the manufacture and dis-

¹The Company filed an answer denying the allegations of the United's petition and of the petitions for intervention. It alleged that none of the unions represent a sufficient number of employees in any proper bargaining unit to justify the holding of an election, and denied that an appropriate unit is requested in any of the petitions.

tribution on a Nation-wide scale of numerous cereals, various types of flour, macaroni, spaghetti, cornmeal, and stock poultry feeds. Its principal plants in the United States are located at Cedar Rapids, Iowa, Akron, Ohio, and St. Joseph, Missouri. We are here concerned only with the Cedar Rapids plant, the operations of which consist of unloading, handling, and processing of grains and other materials, and the packing and shipping of finished products.

The principal raw materials used by the Company consist of oats, corn, wheat, barley, rice, soy beans, and buckwheat. During 1940 the Company used more than \$1,000,000 worth of such materials, in excess of 75 per cent of which were transported from points outside the State of Iowa to the Cedar Rapids plant. The approximate value of finished products produced at the Cedar Rapids plant in 1940 was in excess of \$1,000,000. More than 75 per cent of such products were transported to places outside the State of Iowa. The Company normally employs 800 to 900 employees at the Cedar Rapids plant.

II. THE ORGANIZATIONS INVOLVED

United Cereal Workers Local Industrial Union, No. 1105, is a labor organization affiliated with the Congress of Industrial Organizations. It admits to membership employees at the Cedar Rapids plant of the Company.

Sheet Metal Workers' International Association, Local Union No. 263, is a labor organization affiliated with the American Federation of Labor. It admits to membership sheet-metal workers at the Cedar Rapids plant of the Company.

Millwright Local 1039 of United Brotherhood of Carpenters and Joiners of America is a labor organization affiliated with the American Federation of Labor. It admits to membership millwrights employed at the Cedar Rapids plant of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

About April 1, 1941, the United requested the Company to recognize it as the exclusive representative of the Company's employees. The Company suggested that the United obtain certification by the Board. A statement of the Regional Director, introduced in evidence, shows that the United, the Millwrights, and the Sheet Metal Workers each represent a substantial number of employees in the units alleged by each to be appropriate.²

²The Regional Director reported that the United presented to him 412 membership cards and 40 application cards of which 435 bore apparently genuine original signatures. Of these cards 451 were dated between February 1 and April 12, 1941, and 1 was undated. The Millwrights presented 22 authorization cards, all of which bore apparently genuine signatures and none of which were dated. The Sheet Metal Workers presented a petition signed by 10 persons; all of the signatures appeared to be genuine. The petition was not dated, but it appeared at the hearing that it was signed on April 10, 1941. Federal Labor Union 22,325, A. F. of L., which had asserted an interest in the matter, submitted no evidence in support of its claim.

We find that a question has arisen concerning the representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The United contends that all production and maintenance employees at the Cedar Rapids plant of the Company, including watchmen, firemen, and engineers,³ and excluding office employees and supervisors with the right to hire and discharge constitute a unit appropriate for the purposes of collective bargaining. The Millwrights urge that a separate unit of all millwrights and apprentices is appropriate, and the Sheet Metal Workers claim that a separate unit of sheet-metal workers and apprentices should be established. As stated above, the Company contended in its answer that none of the units sought is appropriate, but it introduced no evidence concerning the question.

The sheet-metal workers and their apprentices are skilled employees and are members of a well-established craft. However, they work throughout the plant as do other maintenance employees and there is evidence to show the appropriateness of an industrial unit which would include the sheet-metal workers. Although the sheet-metal workers have presented grievances and discussed problems with the Company as part of a committee from the mechanical department, the Company has never recognized them as a distinct group for purposes of collective bargaining. These employees could thus function either as a separate unit or as a part of a single industrial unit.

An election will be held among all sheet-metal workers and their apprentices at the Cedar Rapids plant of the Company to determine

³ The engineers sought to be included were identified at the hearing as heating engineers, who operate power machines and heating apparatus. The United does not desire the inclusion of drafting and planning engineers. At the hearing the C. I. O. regional director stated that the United claimed that laboratory employees should be included in the unit. In its brief the United takes a contrary position.

whether they wish to be represented by the United, by the Sheet Metal Workers, or by neither. On the results of this election will depend the appropriate unit. If these employees select a bargaining representative other than the representative selected by the employees in the plant-wide industrial unit, they will constitute a separate and distinct appropriate unit. If they choose the same representative as the employees in the plant-wide unit, they will be merged into a single unit with such employees.

The millwrights and their apprentices are also members of a well-established craft and constitute a skilled group. Many of them have been members of the Millwrights for many years. They too, however, are engaged in work which takes them throughout the plant and there is evidence to show that they might appropriately be included in an industrial unit. The Millwrights have never attempted to bargain collectively with the Company, although they have participated with other employees of the mechanical department in discussions with the Company.

We shall hold an election among the millwrights and their apprentices to determine whether they wish to be represented by the United, by the Millwrights, or by neither. The determination of the appropriate unit will depend upon the results of this election. If the millwrights select a bargaining representative other than the representative selected by the employees in the plant-wide industrial unit, they will constitute a separate and distinct appropriate unit. If they choose the same representative as the employees in the plant-wide industrial unit, they will be merged into a single unit with such employees.

We find that all the production and maintenance employees at the Cedar Rapids plant of the Company, including watchmen, firemen, and heating engineers, and excluding drafting and planning engineers, laboratory employees, office employees, and supervisors with the right to hire and discharge, may properly constitute a unit appropriate for the purposes of collective bargaining which would insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act. As indicated above, millwrights and sheet-metal workers may or may not be included within such unit, depending upon the results of an election which we shall direct. We shall, therefore, make no final determination of the appropriate unit or units pending the elections to be conducted among the millwrights and sheet-metal workers.

VI. THE DETERMINATION OF REPRESENTATIVES

We have heretofore decided that separate elections will be held to determine the collective bargaining representatives for the mill-

wrights and sheet-metal workers and their apprentices. We find that the question concerning the representation of the employees in the industrial unit can best be resolved by means of an election by secret ballot.

The United requested that the last pay roll preceding April 11, 1941, the date of its amended petition, be selected for determining the eligibility of voters,⁴ because some of the employees were thereafter temporarily laid off. The Company's manager testified that permanent employees who are presently laid off are carried on the pay roll for a number of months and that there would be no difference between the pay roll of April 11 and that of April 30. Moreover, our Direction will provide specifically for employees who are temporarily laid off. We shall direct that those eligible to vote in the election shall be the employees who were employed by the Company during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to such limitations and additions as are set forth in such Direction of Elections.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSION OF LAW

A question affecting commerce has arisen concerning the representation of employees of The Quaker Oats Company, Cedar Rapids, Iowa, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with The Quaker Oats Company, Cedar Rapids, Iowa, elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighteenth Region, acting in this matter as agent for the National Labor Relations

⁴ At the hearing the United first requested that the last pay-roll date prior to the hearing be used to determine eligibility. The Millwrights, the Sheet Metal Workers, and the Company agreed to the use of that date. Prior to the conclusion of the hearing the United requested the use of the earlier pay-roll date.

Board, and subject to Article III, Section 9, of said Rules and Regulations:

1. Among all sheet-metal workers and apprentices at the Cedar Rapids plant of the Company who were employed during the pay-roll period immediately preceding the date of this Direction, including those who did not work during such pay-roll period because they were ill or on vacation or in the active military service or training of the United States, or temporarily laid off, but excluding employees who have since quit or been discharged for cause, to determine whether they desire to be represented by United Cereal Workers Local Industrial Union, No. 1105, affiliated with the Congress of Industrial Organizations, or by Sheet Metal Workers' International Association, Local Union No. 263, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither; and

2. Among all millwrights and apprentices at the Cedar Rapids plant of the Company who were employed during the pay-roll period immediately preceding the date of this Direction, including those who did not work during such pay-roll period because they were ill or on vacation or in the active military service or training of the United States, or temporarily laid off, but excluding employees who have since quit or been discharged for cause, to determine whether they desire to be represented by United Cereal Workers Local Industrial Union, No. 1105, affiliated with the Congress of Industrial Organizations, or by Millwright Local 1039 of United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither; and

3. Among all production and maintenance employees at the Cedar Rapids plant of the Company, including watchmen, firemen, and heating engineers, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during such pay-roll period because they were ill or on vacation or in the active military service or training of the United States, or temporarily laid off, but excluding planning and drafting engineers and laboratory employees, office employees, and supervisors with the right to hire and discharge and employees who have since quit or been discharged for cause, to determine whether or not they desire to be represented by United Cereal Workers Local Industrial Union, No. 1105, affiliated with the Congress of Industrial Organizations, for purposes of collective bargaining.

MR. EDWIN S. SMITH, dissenting:

I see no justification for granting employees in the units urged by the Millwrights and Sheet Metal Workers the privilege of split-

ting themselves off from the industrial unit in this case. They constitute some of the employees in one of many departments in an integrated plant and there is no bargaining history on a craft basis between them and the Company. I think the reasons expressed in my dissenting opinions in the *Allis-Chalmers*⁵ and subsequent cases are here applicable, and under these circumstances I consider that the unit sought by the United is appropriate and would so hold.

If, however, separate elections are to be held among the millwrights and the sheet-metal workers and their apprentices, as a majority of the Board has directed, I believe, for the reasons stated by me in previous dissenting opinions,⁶ that the Board's Decision should provide that if the craft employees do not vote themselves out of the industrial unit by designating the craft unions, they should then be considered a component part of the industrial unit.

⁵ *Matter of Allis-Chalmers Manufacturing Company and International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159, 175.

⁶ *Matter of The Cudahy Packing Company and Local 55, United Packinghouse Workers of America, of Packinghouse Workers Organizing Committee, C. I. O.*, 32 N. L. R. B. 72. *Matter of Dain Manufacturing Company and Lodge No. 1465, International Association of Machinists—A. F. of L.*, 32 N. L. R. B. 307.